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| 10/736,259 | 12/15/2003 | Michael L. Kazar | SPIN-1 CONT | 4663 |

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EXAMINER

CHOI, WOO H

ART UNIT PAPER NUMBER

2189

DATE MAILED: 02/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,259

Applicant(s)

KAZAR ET AL.

Examiner

Woo H. Choi

Art Unit

2189

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☒ Claim(s) 7-14 and 20-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/13/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 – 26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 14 of U.S. Patent No. 6,671,773. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are broader versions of patented claims, and therefore, are anticipated by the patented claims.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 17 – 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 17 recites the limitation “the ID” in line 2. There are two types of IDs recited prior to this limitation, file IDs and request’s ID. It is not clear which one of the IDs this limitation refers to. Claims 18 – 24 are rejected for being dependent from claim 17, which is found to be defective as discussed above.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1 – 6, 16 – 19, 25 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Manczak *et al.* (US Patent Application Publication No. 2002/0161855, hereinafter “Manczak”).

7. With respect to claims 1, 16 and 25, Manczak discloses a system for responding to file system requests having file IDs comprising, a volume identifier specifying the file system being accessed, and R, an integer, specifying the file within the file system being accessed comprising (figure 3):

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D disk elements in which files are stored, where D is greater than or equal to 2 and is an integer (324);

a switching fabric (314) connected to the D disk elements to route requests to a corresponding disk element; and

N network elements (312 and/or 315) connected to the switching fabric, each network element having a mapping function that for every value of V, specifies one or more elements from the set D that store the data specified by volume V, where N is greater than or equal to 2 and is an integer and $N+D$ is greater than or equal to 4, which receives the requests and causes the switching fabric to route the requests by their file ID according to the mapping function (page 2, paragraph 23 and page 3, paragraph 25).

8. With respect to claims 2 and 17, see page 3, paragraph 25.
9. With respect to claims 3 and 18, see page 3, paragraph 25 and page 4, paragraph 38.
10. With respect to claim 4, disk controllers are required for any functional disks.
11. With respect to claims 5, 6, 19 and 26, see page 2, paragraph 23.
12. Claims 1 – 6, 16 – 19, 25 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Jiang *et al.* (US Patent No. 6,453,354 hereinafter “Jiang”).

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13. With respect to claims 1, 16 and 25, Jiang discloses a system (figure 2) for responding to file system requests having file IDs comprising (col. 15 and 16, client command – server response table, see SMB_COM_READ), a volume identifier (Tid) specifying the file system being accessed, and R, an integer, specifying the file (Fid) within the file system being accessed comprising (figure 3):

D disk elements in which files are stored, where D is greater than or equal to 2 and is an integer (45);

a switching fabric (connections between the data movers 41 and 42 and disks 43 and 44) connected to the D disk elements to route requests to a corresponding disk element; and

N network elements (41, 42) connected to the switching fabric, each network element having a mapping function that for every value of V, specifies one or more elements from the set D that store the data specified by volume V, where N is greater than or equal to 2 and is an integer and $N+D$ is greater than or equal to 4, which receives the requests and causes the switching fabric to route the requests by their file ID according to the mapping function (see col. 15 and 16, client command – server response table).

14. With respect to claims 2, and 17, see col. 15, SMB_COM_OPEN_ANDX.

15. With respect to claim 3 and 18, see figures 12 and 18.

16. With respect to claim 4, disk controllers are required for any functional disks.

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17. With respect to claims 5, 6, 19 and 26, see col. 13, lines 34 – 41.

Allowable Subject Matter

18. Claims 7 – 15 and are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if double patenting rejections are overcome.

19. Claims 20 – 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, if amended to overcome rejections under 36 USC 112, second paragraph without changing the scope of the claims and if double patenting rejections are overcome.

Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Woo H. Choi whose telephone number is (571) 272-4179. The examiner can normally be reached on M-F, 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Kim can be reached on (571) 272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Woo H. Choi
February 10, 2006